



PHC
25

PTO/SB/21 (04-07)

Approved for use through 09/30/2007. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

14

Application Number

09/690,574

Filing Date

10/17/2000

First Named Inventor

Mike Daily

Art Unit

2617

Examiner Name

Ferguson, Keith

Attorney Docket Number

HRL048

ENCLOSURES (Check all that apply)

☐

Fee Transmittal Form

☐

Fee Attached

☐

Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

☐

Extension of Time Request

☐

Express Abandonment Request

☒

Information Disclosure Statement

☐

Certified Copy of Priority Document(s)

☐

Reply to Missing Parts/
Incomplete Application

☐

Reply to Missing Parts
under 37 CFR 1.52 or 1.53

☐

Drawing(s)

☐

Licensing-related Papers

☒

Petition

☐

Petition to Convert to a
Provisional Application

☐

Power of Attorney, Revocation

Change of Correspondence Address

☐

Terminal Disclaimer

☐

Request for Refund

☐

CD, Number of CD(s) _____

☐ Landscape Table on CD

☐

After Allowance Communication to TC

☐

Appeal Communication to Board
of Appeals and Interferences

☐

Appeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

☐

Proprietary Information

☐

Status Letter

☒

Other Enclosure(s) (please identify
below):

Return Receipt Postcard

Personal Statement under 37 C.F.R. 1.8 (b)
(3)

Remarks

Enclosed please find a Renewed Petition under 37 C.F.R. 1.181 and a Personal Statement under 37 C.F.R. 1.8 (b)(3).

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Tope-McKay & Associates

Signature

Printed name

Cary Tope-McKay

Date

07/27/2007

Reg. No.

41,350

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Cary Tope-McKay

Date

07/27/2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

TOPE-MCKAY & ASSOCIATES
23852 PACIFIC COAST HIGHWAY #311
MALIBU CA 90265

COPY MAILED

JUN 21 2007

In re Application of
Mike Daily et al.
Application No. 09/690,574
Filed: October 17, 2000
Attorney Docket No. HRL048
Title: AUDIO ON LOCATION

:
:
:
:
: DECISION ON PETITION
: UNDER 37 C.F.R. §1.181(A)
:

This is a decision on the petition pursuant to 37 C.F.R.
§1.181(a), filed on April 16, 2007.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed August 9, 2004, which set a shortened statutory period for reply of three months. An after-final amendment was received on October 8, 2004, and an advisory action was mailed on November 30, 2004. An appeal brief was filed on March 3, 2005, however a notice of appeal was not filed prevent thereto. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 10, 2004. A notice of abandonment was mailed on January 23, 2007.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and

Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment.

Petitioner has asserted that a notice of appeal was timely submitted to the Office on December 30, 2004. Petitioner has submitted a copy of this notice of appeal, and it is noted that it contains both an authorization to charge both a credit card and a Deposit Account, as well as a certificate of mailing dated December 30, 2004.

The electronic file has been reviewed, and it does not appear to contain a copy of this submission.

Certificate of mailing practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous mailing and provided an additional copy of the previously submitted correspondence. However, it is noted that the certificate of facsimile transmission was executed by one Scott Davison, and it does not appear that Petitioner has included a statement from this individual. 37 C.F.R. §1.8(b)(3) requires the inclusion of a statement that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. On renewed petition, Petitioner may wish to include a statement from Mr. Davison.

CONCLUSION

Pursuant to the discussion above, the submission is incomplete. It follows that the present petition pursuant to 37 C.F.R. §1.181 must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.181." This is not a final agency action within the meaning of 5 U.S.C §704.

The alternate petition under 37 C.F.R. §1.137(b) will be held in abeyance so as to afford Petitioner the opportunity to file a renewed petition under Rule §1.181. If Petitioner would prefer to seek revival under the unintentional standard, a response to this decision should be submitted with words to this effect.

Any subsequent petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail¹, hand-delivery², or facsimile³. If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁴. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

2 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

3 (571) 273-8300- please note this is a central facsimile number.

4 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/690,574
5 Filing Date : 10/17/2000
Firm Docket No. : HRL048
First Named Inventor : Mike Daily
10 Examiner : Ferguson, Keith
Date : July 27, 2007
15 Attorney Handling Matter : **Paul Shanowski**

TITLE: AUDIO ON LOCATION

RENEWED PETITION UNDER 37 C.F.R. § 1.181

ATTN: PETITIONS – Paul Shanowski

Dear Mr. Shanowski,

25 Applicant respectfully requests a Renewed Petition to Withdraw the Holding of
Abandonment under 37 C.F.R. § 1.181(a) for the above referenced application. The
Petition Decision mailed to Applicant on June 21, 2007 stated that Applicant failed to
include a statement that attests on a personal knowledge basis or to the satisfaction of the
Director to the previous timely mailing or transmission. Thus, Applicant now responds
30 with a proper statement by Scott Davison, the individual that executed the original
facsimile transmission.

Previous Correspondence:

Applicant received a Notice of Abandonment because the Applicant allegedly did not file
35 an Official Notice of Appeal. However, Applicant mailed an Official Notice of Appeal
on December 30, 2004 with the originally filed reply. A copy of the originally filed reply

and a properly itemized date-stamped postcard receipt, as required by MPEP § 711.03(c) was attached to the Petition mailed on April 12, 2007.

Also, prior to receiving the Notice of Abandonment, the Examiner notified the Applicant
5 that no Notice of Appeal was received by the Examiner. In response, Applicant sent
proof via facsimile to the Examiner that the Notice was sent, including the date-stamped
postcard, on December 19, 2006. The corresponding facsimile was attached to the
previously filed Petition, mailed on April 12, 2007. Afterwards, the Applicant spoke
with the Examiner and the matter appeared to be resolved. Applicant subsequently
10 received the Notice of Abandonment, dated January 23, 2007.

In response to the Notice of Abandonment, the Applicant spoke with the Examiner on
March 20, 2007 and the Examiner requested Applicant to again fax the proper documents
a second time. Applicant timely responded and sent the proper documents, including the
15 Notice of Appeal and postcard receipt, to the Examiner via facsimile on March 20, 2007.
The corresponding facsimile report was attached to the previously filed Petition, mailed
on April 12, 2007. Applicant confirmed with the Examiner that the facsimile was
received and the Examiner stated that a docket clerk would review the documents and
inform us on how to proceed. Applicant followed up with the Examiner within the
20 following week and the documents were still under review. Not until April 5, 2007, was
the Applicant told by the Examiner that a head examiner now requests a Petition to
Withdraw the Holding of Abandonment. As such, Applicant requested a Petition to
Withdraw the Holding of Abandonment. The Petition was dismissed for failing to
include a statement which attests on a personal knowledge basis the previous timely
25 mailing, which Applicant now submits.

In the alternative to the Petition to Withdraw the Holding of Abandonment, Applicant
previously attached the appropriate documents to file a Petition for Revival of an
Application Abandoned for Unintentional Delay.

5

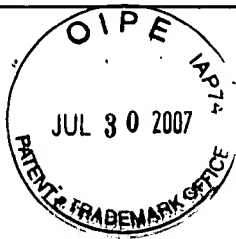
Respectfully submitted,



Cary Tope-McKay

Registration No. 41,350

Tel.: (310) 589-8158



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/690,574
Filing Date : 10/17/2000
Firm Docket No. : HRL048
First Named Inventor : Mike Daily
Examiner : Ferguson, Keith
Date : July 17, 2007
Attorney Handling Matter : Paul Shanowski

TITLE: AUDIO ON LOCATION

Personal Statement under 37 CFR §1.8(b)(3)

I, Scott Davison, attest to my personal knowledge that I sent a timely notice of appeal on December 30, 2004 for US Application No. 09/690,574, attorney reference HRL048. The notice of appeal along with supporting documentation including a transmittal with certificate of mailing, fee calculation sheet, credit card payment form, and return receipt postcard was submitted by first-class mail with the US Postal Service on December 30, 2004 and was properly addressed to the USPTO.

Respectfully submitted,

Scott Davison

Registration No. 52,800

(760) 434-5868

Serial/App. No.: 09/960,574 Mailing Date: 12/30/2004
Atty Ref No.: HRL048 Attorney: Cary Tape-McKay
Inventor: Daily

The following, due 12/30/2004, was received in the U.S.P.T.O.
on the date stamped hereon:

- ☒ Notice of Appeal
- ☒ Transmittal Form
- ☒ Fee Transmittal Sheets (2 Copies)
- ☒ Credit Card Payment Form for \$500.00





Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

5

Application Number 09/960,574

Filing Date 10/17/2000

First Named Inventor Daily

Art Unit 2683

Examiner Name Ferguson, Keith

Attorney Docket Number HRL048

ENCLOSURES (Check all that apply)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to a Technology Center (TC) |
| <input checked="" type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Terminal Disclaimer | Return Receipt Postcard |
| <input type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> Request for Refund | |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> CD, Number of CD(s) _____ | |
| <input checked="" type="checkbox"/> Response to Missing Parts/
Incomplete Application | Remarks _____ | |
| <input type="checkbox"/> Response to Missing Parts
under 37 CFR 1.52 or 1.53 | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual Tope-McKay & Associates

Signature

Date

12/30/2004

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 12/30/2004

Typed or printed Scott Davison

Signature

Date 12/30/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.